

Attorney Docket No.: J3747(C)
Serial No.: 10/592,921
Filed: September 14, 2006
Confirmation No.: 6265

REMARKS

First, the present Communication is filed to enter amendments to claims made in the Amendment After Final which was submitted August 4, 2010 and which amendments were not previously entered. Specifically, the Examiner noted that the amendments would raise new issues that would require further consideration and/or search. It is believed entry of the amendments will place the application and claim(s) in condition for allowance and it is respectfully requested that, upon entry of the amendments, the Examiner reconsider and withdraw all rejections of the claims.

With regard to use of "consisting essentially of" language, as noted in the amendment submitted August 4, 2010 (see page 5), the language was added to emphasize that compositions of the invention are "hair treatment" compositions (e.g., conditioners) which do not include anionic surfactant while, by contrast, Frantz et al. requires anionic (the reference relates to how to obtain stable compositions in compositions comprising mixtures of anionic and cationic surfactant. As applicants have previously argued, even if anionic were present (which it is not intended to be), compositions of our invention would differ anyway at least because compositions of Franz do not contain di-(C₂₀-C₂₄) imidozoline quat.

Further, with regard to the use of 1 to 10% by wt. C₁₀-C₂₂ alkyl chain fatty material (as per amended claims), applicants did not state that it was impossible for such to be present in Frantz. Rather, applicants noted that use of such fatty acid structurant is discouraged (e.g., it is hardly viewed as necessary, only as optional at

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best) because Frantz can form stable compositions merely by proper selection of surfactants. In short, applicants point is that the language of Franz emphasizes the non-criticality of use of such structurant.

Thus, it can be seen that there are numerous ways in which our invention differs from that of Frantz:

- (1) we have specific imidazoline quat which Franz does not;
- (2) we require absence of anionic, while Franz requires its presence; and
- (3) we require structurant while Franz discloses use of structurant as optional and indeed, far from requiring use, emphasizes that use of structurant is not critical.

The present invention requires very strict criticalities and, it is respectfully suggested the Examiner is committing the classic mistake of picking and choosing elements in hindsight. There is nothing that would have directed the person of ordinary skill in the art to piece together the invention, as claimed, in exactly this manner. The Examiner does so only with the benefit of hindsight reconstruction.

Accordingly, with entry of the amendment (upon filing of RCE), applicants respectfully request that the Examiner withdrawn all rejections of the claims and that the claims, as amended, be allowed.

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If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

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